



Economic Impact Analysis Virginia Department of Planning and Budget

6 VAC 35-30 – Regulations for State Reimbursement of Local Juvenile Residential Facility Costs

Department of Juvenile Justice

March 26, 2009

Summary of the Proposed Amendments to Regulation

As a part of a periodic review process, the Board of Juvenile Justice (Board) proposes to amend its Regulations for State Reimbursement of Local Juvenile Facility Costs. Specifically, the Board proposes to:

- Enumerate phases of the reimbursement process and the responsibilities of each party during these phases,
- Clarify communication and submission timeframes for acceptance of bids for construction and add language that stipulates the Department of Juvenile Justice's (DJJ's) failure to respond to bid information will serve as acceptance of the locality's recommendation,
- Specify that failure to submit the inspection or progress reports in a timely fashion or failure to obtain approval of a substantive change could constitute grounds to deny reimbursement,
- Clarify the required components of the final inspection schedule,
- Clarify and add structure to pre-screening step to ensure that all projects subject to the regulation are identified early in the planning process,
- Incorporate a review of efficiency as one component of the reimbursement process and specify that the Board may adjust the costs of construction approved for reimbursement subject to the outcome of that efficiency review and a needs assessment already in current regulations,

- Increase the contingency percentage from 3% to 10%,
- Allow for a state-set inflation (deflation) factor to be applied to reimbursements and
- Replace a 600 square feet per bed reimbursement cap with a three tiered cap.

Result of Analysis

The benefits likely exceed the costs for most proposed changes. There is insufficient evidence to decide whether benefits exceed costs for several other proposed changes.

Estimated Economic Impact

The Board last updated the regulations that govern reimbursement to localities for construction of juvenile facilities in 1992. Pursuant to periodic review requirements, the Board is now proposing many changes to these regulations. Most of these changes are intended to clarify existing regulatory language or recognize Board policy/current practice. Regulated entities are very unlikely to incur any costs on account of proposed changes that fall into this category. Regulated entities will receive a benefit to the extent that these changes allow them to better understand the rules to which they must adhere.

The Board also proposes several substantive changes to portions of these regulations that govern inflation and contingency adjustments to reimbursements as well as per bed reimbursement rates.

Current regulations allow the Board to adjust reimbursement payments on a contingency basis by up to 3% of the initial estimate of construction costs. This contingency percentage can be added to account for changes in construction cost that occur between the time plans are submitted and the time (sometimes years later) when the planned facility is actually built. The Board is also currently allowed to adjust reimbursements by a “change order” amount at the end of construction.

The Board proposes to increase the contingency percentage to 10% and add a new inflation factor. The inflation factor is set by the state and is “a yearly market inflation rate applied from January 1 of the year of the submitted design through the midpoint of construction, compounded”.

These two changes may increase the state's share of construction costs for local juvenile detention facilities while reducing locality expenditures on these projects (since localities currently must cover any increased costs over the current 3% contingency amount plus the "change order"). This will likely benefit localities that will have to use fewer local dollars to build required facilities but will also likely cost the state more general revenue dollars. To the extent that DJJ can make these building projects more efficient through their review process, fewer tax dollars overall will likely be spent on these facilities. If, however, localities are already building as efficiently as the state would require, then these regulatory changes will only serve to shift the costs of these facilities from the specific localities where they will be located to state taxpayers who likely will not directly benefit from the building of any given facility because they do not live in the affected locality.

Current Regulations impose a 600 square feet per bed reimbursement cap on all planned facility construction no matter how many beds the facility will be built for. This cap does not, however, account for economies of scale that may allow larger facilities to be built more cheaply. A large facility will not, for instance, require twice as many offices or kitchens as a facility half its size.

To account for these economies of scale, the Board proposes to institute a three tiered per bed cap. Facilities that will house 35 or fewer juveniles will have an area allowance cap of 700 square feet per bed. Facilities that will house between 36 and 79 juveniles will have a cap of 650 square feet per bed. Facilities that will house 80 or more juveniles will have a cap of 550 square feet per bed.

This change will increase reimbursement for smaller facilities and decrease reimbursement for larger facilities. Comparing two recently built facilities will give a rough idea of the reimbursement changes. The Piedmont detention facility was built to house 20 juveniles and has 669 square feet per bed. Under the existing allowance, the locality had to cover all costs for the additional 69 feet per bed. Under the new allowance, all square footage would have been subject to the reimbursement formula. The Virginia Beach detention home was built to house 90 juveniles and has 594 square feet per bed. Under the existing allowance, all square footage was subject to the reimbursement formula. Under the new allowance, the cost of 44 square feet per bed would be purely the responsibility of the building locality. DJJ reports, based on bed size of

recently built facilities, that total state costs under the proposed formulas would have been reduced by roughly \$63,000 for the last seven facilities built. The new maximum allowances are likely more reflective of the actual square footage needs for facilities and may encourage larger facilities to be built with an eye toward greater efficiency.

Businesses and Entities Affected

These proposed regulations will affect localities that intend to build juvenile detention facilities. DJJ reports that there are 24 detention facilities in the state currently. One locality has recently submitted a needs assessment for a new building project.

Localities Particularly Affected

Localities that want to build or expand juvenile detention facilities will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property

This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects

Small businesses in the Commonwealth are unlikely to incur any costs that are directly attributable to this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses in the Commonwealth are unlikely to incur any costs that are directly attributable to this regulatory action.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.